

3 FAH-1 H-2000 PERSONNEL OPERATIONS

3 FAH-1 H-2100 EMPLOYMENT

3 FAH-1 H-2110 DRUG-FREE WORKPLACE

(CT:POH-164; 09-08-2014)
(Office of Origin: DGHR/MED)

3 FAH-1 H-2111 DRUG-FREE WORKPLACE PROGRAM (DFWP)

(CT:POH-164; 09-08-2014)
(State Only)
(Applies to Foreign Service and Civil Service employees)

The Department of State's Drug-Free Workplace Program (DFWP) is based on a Drug-Free Workplace Program Plan *published as* 3 FAH-1 Exhibit H-2111 of this subchapter.

3 FAH-1 H-2112 THROUGH H-2119 UNASSIGNED

3 FAH-1 Exhibit H-2111

U.S. Department of State Drug Free Workplace Program

(CT:POH-164; 09-08-2014)

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I. INTRODUCTION

A. Background

On September 15, 1986, President Reagan signed Executive Order 12564 (*hereinafter, referred to as the "Executive Order"*), establishing the goal of a drug-free federal workplace. The *Executive* Order made it a condition of employment for all *federal* employees to refrain from using illegal drugs on or off-duty. In a letter to all Executive Branch employees dated October 4, 1986, the President reiterated his goal of ensuring a safe and drug-free workplace for all *federal* workers.

The Executive Order recognized that illegal drug use is seriously impairing a portion of the national work force, resulting in the loss of billions of dollars each year. As the largest employer in the nation, the U.S. *federal government* has a compelling proprietary interest in establishing reasonable conditions of employment. Prohibiting employee drug use is one such condition. The Department of State is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain

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employee productivity. The intent of *this* policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is, quite simply, incompatible with federal service.

On July 11, 1987, Congress passed legislation implementing the Executive Order. Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301, (hereafter, the "Act"), was passed in an attempt to establish uniformity among federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the U.S. *federal government's* drug testing program.

The purpose of the Department of State's Drug-Free Workplace *Program* (*hereinafter, referred to as the "DFWP"*) is to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free *federal* workplace, consistent with the Executive Order and the Act.

B. Statement of Policy

The Department of State (*hereafter referred to as "the Department"*), as a consequence of its leading role in developing and implementing policies affecting the security of the United States, has a compelling *obligation* to eliminate illegal drug use from its workplace. Much of the work of the Department involves highly sensitive information that must not be compromised. It is critically important that employees with access to sensitive information be reliable and stable and *show* good judgment. Illegal drug use creates the possibility of coercion, influence, and irresponsible action under pressure *and poses* a serious risk to national security, public safety, and effective law enforcement. *Illegal drug use* is inconsistent with the special trust placed in those who serve the public and damages the ability of the United States to protect its interests abroad, both in terms of combating the illicit flow of narcotics and assuring the wide range of United States political, economic, and social relationships with foreign governments.

The Department's *efforts to eliminate illicit* drug use in the workplace *are*, by example, a signal to foreign governments that the United States *treats* this global threat seriously. United States diplomats abroad play a special role in the national and international strategy to halt the vast worldwide trafficking of drugs by demonstrating leadership in exploring regional cooperation on the narcotics issue, and encouraging other countries to do the same. This position is backed by the Secretary's public stand that the United States cannot preach to other governments what it does not practice at home.

This is particularly illustrated, where, through the efforts of the Bureau of International Narcotics and Law Enforcement, the Department has undertaken an aggressive *program* to obtain the cooperation of foreign governments to stop the illegal production, trafficking, and use of drugs worldwide.

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Assuring the successful accomplishment of the Department's mission is a critical dimension of the *DFWP*. Another equally important dimension of central concern to the Department is the well-being of *its* employees.

Therefore, to protect our national security, *mitigate* any *risks* to the health, welfare and safety of the public and Department employees, and to increase productivity in the workplace, it is the policy of the Department that the use of illegal drugs, on or off-duty, will not be tolerated. It is the responsibility of every employee to comply with this policy.

In developing and implementing a comprehensive *program* to achieve a drug-free workplace, the Department will make every effort to ensure employee understanding of, and employee cooperation with, this drug prevention program. *In* keeping with the requirements of the Executive Order and applicable laws and statutes; records related to the counseling, testing, and rehabilitation of employees in connection with the *DFWP will be treated as confidential, consistent with the provisions herein*.

Accomplishing the goal of a *Department*-wide drug-free workplace rests primarily with senior officials and supervisors of the Department, in keeping with their responsibility for the performance and well-being of employees. *All employees share in the responsibility by abstaining from illegal drug use*.

The *success* of *the DFWP* depends on how well the Department can inform its employees of the hazards of drug use, and on *the level of* assistance it can provide drug users. Equally important is the assurance to employees that personal dignity and privacy will be respected in reaching the Department's goal of a drug-free workplace.

Therefore, this *DFWP* includes *comprehensive* policies and procedures for:

- (1) *Alcohol and Drug Awareness Program (ADAP)*;
- (2) *Supervisor* training;
- (3) Employee education; and
- (4) Identification of illegal drug *users* through drug testing on a carefully controlled and monitored basis.

C. Nature, Frequency, and Type of Drug Testing *Utilized*

The *DFWP* includes the following types of drug testing:

- (1) Random testing of employees in *Testing Designated Positions (TDPs)*;
- (2) Reasonable suspicion testing;
- (3) Accident or unsafe practice testing;
- (4) Voluntary testing;
- (5) Testing as part of, or as a follow-up to, counseling rehabilitation; *and*
- (6) *Applicant testing*.

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The frequency of testing for random testing, voluntary testing, and follow-up testing is specified at *Sections XII(B) - XII(C) and* Section IX(C), of this *DFWP*, respectively. The Secretary *or his or her designee* reserves the right to increase or decrease the frequency of testing based on the *Department's* mission, need, availability of resources, and experience in the *DFWP*, consistent with the duty to achieve a drug-free workplace under *the* Executive Order.

D. Drugs for *Which* Individuals *are* Tested

The Department tests for the following drugs: marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

E. Scope

This *DFWP applies to* all employees of the Department.

F. Union Cooperation

The active *participation and support of labor organizations can contribute to the success of this DFWP*. Management will seek ways in which recognized bargaining unit representatives might assist in program implementation, such as in acquainting employees with rehabilitation facilities and by enhancing employee confidence in the program. Management will continue to observe agreements already reached and will continue to meet its obligations under Title VII of the Civil Service Reform Act of 1978, and Chapter 10 of the Foreign Service Act of 1980, *as amended*.

G. References

(1) Authorities

- (a) Executive Order 12564;
- (b) Executive Order 10450;
- (c) Executive Order 12356;
- (d) Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. 7301;
- (e) Mandatory Guidelines for Federal Workplace Drug Testing Programs, *which includes Scientific and Technical Requirements and Certification of Laboratories Engaged in Urine Drug Testing, 53 FR 11970 (1988) as revised; (hereinafter, referred to as the "Mandatory Guidelines for Federal Workplace Drug Testing Programs")*;
- (f) Civil Service Reform Act of 1978, Public Law. 95-454;
- (g) Foreign Service Act of 1980, *as amended*, Public Law. 96-465;
- (h) *Sections 523 and 527 of the Public Health Service Act and implementing regulations at 42 CFR Part 2, Confidentiality of Alcohol and Drug-Abuse Patient Treatment Records*;

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- (i) The Privacy Act of 1974 (5 U.S.C. Section 552a), *prescribing requirements governing the maintenance of records by agencies pertaining to individuals and access to these records by the individual(s) to whom they pertain;*
- (j) *Regulations* implementing the Privacy Act of 1974 within the Department; and
- (k) Federal Employees Substance Abuse Education and Treatment Act of 1986, Public Law 99-570.

(2) Guidance

Foreign Affairs Manual (FAM), including 16 FAM 430, *Alcohol* and Drug Awareness Program (*ADAP*); 3 FAM 4130, Standards for Appointment and Continued Employment; 3 FAM 4300 Disciplinary Actions (Foreign Service); and 3 FAM 4500, Disciplinary Actions (Civil Service).

II. DEFINITIONS

- (1) **Alcohol and Drug Awareness Program (ADAP)** – *The* Department program that provides confidential assistance to employees and their *family members* for drug or alcohol problems. This assistance may be in the form of short-term counseling or referral to a community rehabilitation or counseling program.
- (2) **Department** – *The* Department of State.
- (3) **Drug Program Coordinator (DPC)** – *A* Deputy Assistant Secretary for Human Resources. The DPC is responsible for the *overall* implementation, direction, administration, and management of the *Department's DFWP*.
- (4) **Drug Program Manager (DPM)** – *The* individual who handles the day-to-day management, coordination, and implementation of the Department's *DFWP*. The DPM also makes the final decision regarding deferral of testing.
- (5) **Designated Bureau Drug Program Coordinators (BDPC)** – *The* individuals responsible for *coordinating with the DPM regarding* notification of employees in their bureau *who* have been selected for random drug testing. The *BDPC* may designate individuals in their bureau field offices to assist them in the notification of employees in the field offices.
- (6) **Employee Assistance Program (EAP)** – *In the Department, staff within the ADAP provides* counseling and referral services for alcohol or drug problems. *Counseling services for non-substance-related, behavioral health concerns are provided by* the Employee Consultation Service *staff, within the Office of Mental Health Services*.
- (7) **Employee Consultation Service (ECS)** – *The* Department program

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which provides confidential assistance to employees and employees' *family members* who need short-term counseling or referral for problems other than drug or alcohol *matters*.

- (8) **Employee in a Sensitive Position** - *An* employee who is cleared for access to information classified at *SECRET* or above.
- (9) **Foreign Affairs Manual (FAM)** - *The Department's policies and regulations, to include the DFWP.*
- (10) **Illegal Drugs** - *A* controlled substance included in Schedule I or II, as defined by 21 U.S.C. 802(6), the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription, *as recognized by federal law*, or other uses authorized by law.
- (11) **Medical Review Officer (MRO)** - *The* individual responsible for receiving laboratory results generated from the Department's Program. The MRO must be a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with the individual's medical history and any other relevant biomedical information.
- (12) **Random Testing** - *A* system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing may either be *a)* uniform, unannounced testing of testing designated employees occupying a specified area, element, or position, or *b)* a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.
- (13) **Testing Designated Position (TDP)** - *An employment* position within the Department held by an employee who is cleared for access to information classified at *SECRET* or above.
- (14) **Verified Positive Test Result** - *A* test result that *was* positive *on* an *initial Food and Drug Administration*-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory tests approved by *the* Department of Health and Human Services (HHS)), and reviewed and verified by the Medical Review Officer in accordance with this *Program* and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

III. **ALCOHOL AND DRUG AWARENESS PROGRAM (ADAP)**

A. **Function**

The Department's *ADAP provides EAP services for individuals with substance-related concerns*. *ADAP* plays an important role in preventing and resolving employee drug use by: demonstrating the Department's commitment to

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eliminating illegal drug use; providing employees an opportunity, with appropriate assistance, to discontinue their drug use; providing educational materials to supervisors and employees on drug use issues; *advising supervisors on how best to confront* employees who have performance and/or conduct problems *that appear to be based on illegal substance abuse*, and making referrals to appropriate treatment and rehabilitative facilities; and follow-up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. *ADAP is* not involved in the collection of urine samples or the initial reporting of test results. Specifically, the *ADAP*:

- (1) Provides counseling and assistance to employees who self refer for treatment or *who are referred for treatment, including after a confirmed positive drug test result*, and monitors the *employee's* progress through treatment and rehabilitation;
- (2) Provides needed education and training to all levels of the Department on types and effects of drugs, symptoms of drug use and its impact on performance and conduct, relationship of the *ADAP* with the drug testing program, and related treatment, rehabilitation, and confidentiality issues; and
- (3) Ensures that confidentiality of counseling and related medical treatment and rehabilitation records are maintained in accordance with Section XIV of this *DFWP and relevant federal regulations*.

B. Structure

- (1) The Director for *the Office of Mental Health Services or his or her designee* is responsible for oversight and implementation of the Department's *ADAP*.
- (2) *When an employee is referred to ADAP and that employee or his or her family member needs additional mental health or substance-related services, ADAP and the appropriate Office of Mental Health Services' staff will work collaboratively to address these needs in a manner that is in the best interest of the patient(s).*

C. Referral and Availability

- (1) The first time any employee is found to be using drugs, he or she *will* be referred to ADAP. ADAP is *also* available to all employees without regard to a finding of drug use. ADAP provides *an initial assessment of the treatment needs of the person(s) referred and then may provide a brief intervention or recommend community providers for* counseling or rehabilitation. *Education* and training regarding illegal drug use *is made available for all referrals. Individuals having additional counseling needs may be offered other Office of Mental Health services, as appropriate.*
- (2) *When appropriate, ADAP may recommend high-quality treatment programs in the community. Participation in substance abuse*

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treatment is voluntary, as is participation in a specific program recommended by ADAP. If the individual chooses not to participate in a recommended program, elements of the alternative program will be evaluated for adequacy and appropriateness. If the course of treatment is not considered adequate, then ADAP may communicate these findings to Human Resources' (HR) staff as appropriate and consistent with the employee's written consent.

- (3) In the event the employee is not satisfied with the program of treatment or rehabilitation, the employee may seek review of the ADAP referral by notifying the *Director of the Office of Mental Health Services or his or her designee* prior to completion of the program. *Decisions made by the Director or designee are final and are not subject to further administrative review.*
- (4) Regardless of the treatment program chosen, the employee remains responsible for successful completion of the treatment, and assertions that the *Office of Mental Health Services' staff* failed to consider certain factors in making a referral *will* not constitute either an excuse for continuing to use illegal drugs or a defense to disciplinary action if the employee does not complete treatment. *Failure to follow a recommended ADAP treatment may result in separation from Federal service.*

D. Leave *to Participate in Treatment*

Employees are allowed up to one (1) hour (or more as necessitated by travel time) of excused absence for each counseling session *with ADAP*, and up to three (3) hours, exclusive of travel time, during the assessment and/or referral phase of rehabilitation. However, absences during duty hours for treatment, *generally with an outside provider*, must be charged to an appropriate leave category in accordance with law and leave regulations.

E. Records and Confidentiality

All *ADAP records* are confidential in accordance with Section XIV of the *DFWP and other pertinent federal regulations*. *Employees who wish to have their participation in treatment reported to HR or other Department officials will provide written consent for that purpose.*

IV. SUPERVISORY TRAINING

A. Objectives

Supervisors have a key role in establishing and monitoring a drug-free workplace. Therefore, the Department provides training to assist supervisors and managers in recognizing and addressing illegal drug use by agency employees. The purpose of supervisory training is to understand the following:

- (1) *Department's* policies relevant to work performance problems, drug use, and the *ADAP*;

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- (2) *The responsibilities of offering ADAP services;*
- (3) How employee performance and behavioral changes should be recognized and documented;
- (4) The roles of the *MRO*, medical staff, supervisors, Human Resources (*HR*), and *ADAP* personnel;
- (5) *Identification of ADAP services and how best to access these services;*
- (6) How the *ADAP* is linked to the performance appraisal and the disciplinary process; and
- (7) The process of reintegrating employees into the workforce.

B. Implementation

The *DPM*, in conjunction with the *ADAP Director*, will provide educational material and/or training to inform employees and supervisors of the requirements of the *DFWP*.

C. Training Package

Supervisory training may be presented as a separate course, or included as part of an ongoing supervisory training program. Training may consist of written materials or classroom sessions or a combination of the two. Training *should* be provided as soon as possible after a person assumes supervisory responsibility. Training courses should include the following:

- (1) Overall *Department* policy;
- (2) The prevalence of various employee problems with respect to drugs and alcohol;
- (3) *ADAP resources available to supervisors and employees;*
- (4) How to recognize employees with possible problems;
- (5) Documentation of employee performance or behavior;
- (6) *Skills in confronting employees with possible problems;*
- (7) *Department procedures for referring employees to the ADAP;*
- (8) Disciplinary action and removals from sensitive positions as required by Section 5(c) of the Executive Order;
- (9) Reintegration of employees into the workforce; and
- (10) Written materials, which the supervisor can use at the work site.

V. EMPLOYEE EDUCATION

A. Objectives

The *ADAP Director will make available* drug education opportunities to all Department employees. Drug education should include education material available to all levels of the Department on the following:

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- (1) Types and effects of drugs;
- (2) Symptoms of drug use and the effects on performance and conduct;
- (3) The relationship of the *ADAP* to the drug testing program; and
- (4) Other relevant treatment, rehabilitation, and confidentiality issues.

B. Means of Education

Drug education may consist of the following:

- (1) Distribution of written materials;
- (2) *Recorded programs*;
- (3) Lunch time employee forums;
- (4) Employee drug awareness days; *and*
- (5) *Direct inquiry with ADAP staff.*

VI. SPECIAL DUTIES AND RESPONSIBILITIES

A. Drug Program Coordinator (*DPC*)

A Deputy Assistant Secretary for Human Resources serves as the Drug Program Coordinator (DPC). The DPC is responsible for implementation, direction, administration, and *general oversight of the Department's DFWP*.

B. Drug Program Manager (*DPM*)

The Drug Program Manager (DPM) handles the day-to-day management, coordination, and implementation of the *DFWP*. The DPM has primary responsibility for assuring the effective operation of the testing portion of the program. In carrying out this responsibility, the DPM *should*, among other duties:

- (1) Arrange for all testing *authorized* under *this DFWP*;
- (2) *Ensure* that all employees subject to random testing receive individual notice as described in Section VII(A) of this *DFWP* *and that such employees return a signed acknowledgment of receipt form*;
- (3) Upon receipt of a verified positive test result from the MRO, *transmit* the test result to the appropriate management official empowered to initiate disciplinary action;
- (4) *Document*, through written inspection reports, all results of laboratory inspections conducted;
- (5) *Coordinate* with and *report* to the DPC on activities and findings that may affect the reliability or accuracy of laboratory results;
- (6) In coordination with the *ADAP Director*, *publicize* and *disseminate* drug program educational materials and *oversee* training and education sessions regarding drug use and rehabilitation;
- (7) *Coordinate* all *drug* testing related activities throughout the

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Department wherever possible to conserve resources and to accomplish reliable and accurate testing objectives efficiently and speedily; and

(8) *Provide* approval of deferral of testing.

C. Director, Office of Mental Health Services

The Director of the Office of Mental Health Services or his or her designee should:

- (1) *Assume* the lead role in the development, implementation, and evaluation of the *ADAP*; and
- (2) *Supervise* the *ADAP Director* and *assist* in establishing and maintaining *ADAP* services in the field.

D. ADAP Director

The ADAP Director should:

- (1) Implement and direct the Department's *ADAP*;
- (2) Provide counseling and treatment services to all employees referred to the *ADAP* by *management* or *through* self-referrals, and otherwise offer employees the opportunity for counseling and rehabilitation, *either by direct services or through referral to community providers*;
- (3) Work with the DPM to provide educational materials and training to managers, supervisors, and employees on illegal drugs in the workplace;
- (4) Assist supervisors with performance and/or personnel problems that may be related to illegal drug use;
- (5) Monitor the progress of referred employees during and after the rehabilitation period *and provide feedback to DPM in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records*;
- (6) *Ensure that training is provided to assist supervisors in the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using illegal drugs*;
- (7) Maintain a list of rehabilitation or treatment organizations, which provide counseling and rehabilitative programs, including the following information on each such organization:
 - (a) Name, address, and phone number;
 - (b) Types of services provided;
 - (c) Hours of operation, including emergency hours;
 - (d) Contact person's name and phone number;
 - (e) *General fee and insurance practices*;

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- (f) Client specialization; and
- (g) Other pertinent information.

- (8) Periodically visit rehabilitative or treatment organizations to meet administrative and staff members, tour the site, and *ascertain* the experience, certification, and educational level of staff, and the organization's policy concerning progress reports on clients and post-treatment follow-up.

E. ADAP Staff

ADAP staff should:

- (1) Serve as the initial point of contact for *persons interested in* counseling *related to alcohol or substance abuse*.
- (2) Be familiar with all applicable laws and regulations, including drug treatment and rehabilitation insurance coverage available to employees through the Federal Employee Health Benefits program.
- (3) Be qualified and trained in counseling employees in the occupational setting and identifying drug use.
- (4) *Provide clinical review and oversight of treatment plans by community providers. Plans will be reviewed with the patient to address the appropriateness for individual treatment needs, available resources, and patient willingness to collaborate in following the treatment plan.*
- (5) In making referrals, consider the following:
 - (a) Nature and severity of the problem;
 - (b) Location of the treatment;
 - (c) Cost of the treatment;
 - (d) Intensity of the treatment environment;
 - (e) Availability of inpatient and/or outpatient care;
 - (f) Other special needs, such as transportation and child care; and
 - (g) Employee preference.
- (6) Document encounters in a manner that promotes continuity of care and administrative oversight of services provided.

F. Medical Review Officer (MRO)

The MRO *should*, among other duties:

- (1) Receive all laboratory test results;
- (2) Assure that an individual who has tested positive has been afforded an opportunity to *discuss* the test result in accordance with Section XIV of this *Program*;

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- (3) Consistent with confidentiality requirements, *refer* written determinations regarding all verified positive test results to the DPM, including a positive drug test result *form* indicating that the positive result has been verified, together with all relevant documentation and a summary of findings; and
- (4) *Coordinate* with and *report* to the DPM on all activities and findings on a regular basis.

G. Supervisors

Supervisors *should* be trained to *recognize and* address illegal drug use by employees, and will be provided *access to* information regarding referral of employees to *ADAP*, procedures and requirements for drug testing, and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First line supervisors *should* do the following:

- (1) Attend training sessions on illegal drug use in the workplace;
- (2) Document performance problems, behavior and/or abnormal conduct and refer employees to *ADAP and*, if appropriate, submit findings to the Bureau of Human Resources, Office of Employee Relations, (HR/ER), for HR/ER's determination regarding reasonable suspicion of drug use; *and*
- (3) In conjunction with personnel specialists, assist second line supervisors and the *ADAP Director* in evaluating employee performance and or personnel problems that may be related to illegal drug use.

H. Implementation

Each bureau will *support* the *efficient* and *effective implementation of the Department's DFWP* in accordance with guidelines established by the *DPC*.

I. U.S. Government Contractors

Where it is determined that certain activities provided under this *DFWP* should be undertaken by an outside contractor:

- (1) The *DPM will* serve as Contracting Officer for the administration of all related contracts; *and*
- (2) The *DPC will* ensure that contractors chosen to perform the drug screening tests are duly certified pursuant to the HHS guidelines and that all contracts conform to the technical specifications of the HHS guidelines.

VII. NOTICE

A. Individual Notice

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Each newly-hired employee of the Department must receive a "Department of State Drug Testing Policy" (Form DS-7663) which informs the employee of the DFWP and which should include the following:

- (1) The definition of a TDP;*
- (2) A statement that the employee will have the opportunity to voluntarily identify himself or herself as a user of illegal drugs and to receive counseling or rehabilitation, prior to notification of being tested, and will not be subject to disciplinary action, as set forth in Section VIII(F) of the DFWP; and*
- (3) A statement that an employee holding a TDP will be subject to random testing no sooner than 30 days after the date of the notice.*

B. Signed Acknowledgment

Each *newly hired* employee *will* be asked to acknowledge in writing *on the Form DS-7663* that:

- (1) The employee has received and read the notice which states that employees holding a TDP are designated for random drug testing; and*
- (2) Refusal to submit to testing will result in initiation of disciplinary action, up to and including dismissal.*

These acknowledgments will be centrally collected for easy retrieval by the Director General of Human Resources, and are advisory only. If the employee refuses to sign the acknowledgment, it *should be* noted on the acknowledgment form that the employee received the notice. An employee's refusal *or failure* to sign the notice *will* not preclude testing that employee, or otherwise effect the implementation of this *DFWP*.

C. Administrative Relief

If an employee believes his or her position has been wrongly designated as a TDP, that employee may file an administrative appeal to the *DPC* who has authority to remove the employee from the TDP list. The appeal must be submitted by the employee, in writing, to the *DPC* within 15 days of the individual notice, setting forth all relevant information. The *DPC will* review the appeal based upon the criteria applied in designating that employee's position as a TDP. The official's decision is final and is not subject to further administrative review.

VIII. FINDING OF DRUG USE AND DISCIPLINARY CONSEQUENCES

A. Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to the following:

- (1) Direct observation;
- (2) Evidence obtained from an arrest or criminal conviction;
- (3) A verified positive test result; or

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- (4) An employee's voluntary admission.

B. Mandatory Administrative Actions

An employee found to use illegal drugs *will* be referred to the *ADAP*. If the employee is performing duties requiring access to classified information, he or she will be immediately removed from that position without regard to whether it is a *TDP*. At the discretion of the Under Secretary for Management or his or her designee and with the concurrence from the *Director of the Office of Mental Health Services or his or her designee and the Bureau of Diplomatic Security*, an employee may be allowed to return to duty to a sensitive position provided his or her return does not endanger public health or safety or national security.

C. Range of Consequences

Disciplinary action taken against an employee found to use illegal drugs may include the full range of disciplinary actions, up to and including removal. Moreover, the use of illegal drugs is an adjudicative factor in determining a security clearance. The loss of security clearance may lead to an employee's dismissal as she or he can no longer perform the duties of the job for which she or he was hired.

The severity of the disciplinary action taken against an employee *will* depend on the circumstances of each case. The Department will initiate disciplinary action (up to and including removal) against any employee found to use *or test positive for* illegal drugs. The only exception is for an employee who voluntarily *admits to illegal drug use and* refers himself or herself in accordance with Subsection VIII(F) of this *DFWP*.

Consistent with the requirements of any governing collective bargaining agreement and the Civil Service Reform Act and other statutes, Department orders and regulations, an employee will be referred for consideration of any of the following measures, including but not limited to:

- (1) Reprimanding the employee in writing;
- (2) *Suspending* the employee *for 14 days or less*;
- (3) Suspending the employee for *15* days or *more*;
- (4) Suspending the employee until *she or he* successfully completes a rehabilitation program *with ADAP oversight* or until the Department determines that action other than suspension is more appropriate;
- (5) Reducing the employee's pay or grade; and
- (6) Removing the employee from service.

D. Initiation of Mandatory Removal from Service

The *Department will* initiate action to remove an employee for the following reasons:

- (1) Refusal to obtain counseling or rehabilitation through *ADAP* after

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having been found to use illegal drugs; or

- (2) *Failure to refrain* from illegal drug use after a first finding of illegal drug use.

E. Refusal to Take Drug Test when Required

An employee who refuses to be tested when so required will be subject to the full range of disciplinary action, including removal *or separation*.

Telecommuters are subject to the random drug testing requirements while telecommuting and must report to the testing site on the day requested. The fact that an employee is telecommuting is not a basis for refusing to be tested on the day called or for obtaining a deferral. Employees must make their own transportation arrangements to the testing site. Transportation costs to the drug-testing site for telecommuters will not be reimbursed by the Department.

Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

F. Voluntary *Self-Referral (Safe Harbor)*

Under the Executive Order, the Department is required to initiate action to discipline any employee found to use illegal drugs in every circumstance except that such discipline is not required for an employee who meets all three of these conditions:

- (1) Voluntarily *admits his* or her illegal *drug use* prior to being identified through other means;
- (2) Obtains counseling or rehabilitation through *ADAP*, and;
- (3) Thereafter refrains from using illegal drugs.

This self-referral option, also known as a "*Safe Harbor*" provision, allows any employee to step forward and identify him or herself as an illegal drug user for the purpose of entering a drug treatment program *as recommended by ADAP*. In stepping forward and consistent with Section XII(B) an employee may volunteer for a drug test as a means of identification. Although this self-identification test may yield a verified positive test result, such a result *will* not subject the employee to discipline assuming the other requirements are met. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit his or her problem, this provision is not available to an employee who requests protection under this provision *after*:

- (1) *Being asked to provide a urine sample in accordance with this DFWP;*
or
- (2) *Having been found to have used illegal drugs pursuant to Sections VIII(A)(1) or VIII(A)(2) of this DFWP.*

IX. RANDOM TESTING

A. Testing Designated Positions (*TDPs*) for Random Drug Testing

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In accordance with the Executive Order, the Department has determined that all employees who are cleared for access to information classified at *SECRET* or above are “employees in sensitive positions” (*i.e., TDPs*) and are included in the random drug-testing program. The Department will administer drug tests to all personnel who meet the criteria described above in a program that will provide for an annual frequency of approximately 10 per cent of *TDPs*. Budgetary *constraints* affecting the Department *may* require that testing levels be set *below the annual target*, yet consistent with the goals of the Executive Order and with the Department’s concern that *illicit* drug use may be a factor in leading an employee to assist espionage or criminal activities against the U.S. government.

B. Factors in Designation of a TDP

Among the factors the Under Secretary for Management has considered in designating a TDP is the extent to which the Department:

- (1) Considers its mission inconsistent with illegal drug use;*
- (2) Must foster public trust by preserving employee reputation for integrity, honesty, and responsibility;*
- (3) Has national security responsibilities; and*
- (4) Has positions which:*
 - (a) Authorize employees to carry firearms;*
 - (b) Give employees access to sensitive information;*
 - (c) Authorize employees to engage in law enforcement;*
 - (d) Require employees, as a condition of employment, to obtain a security clearance; or*
 - (e) Require employees to engage in activities affecting public health or safety.*

The Under Secretary for Management reserves the right to add or delete positions determined to be *TDPs* pursuant to the criteria established in the Executive Order *and this DFWP*.

C. Implementing Random Testing

In implementing the program of random testing, the *DPC* is responsible for the following:

- (1) Ensuring that the means of random selection remains confidential; and
- (2) Evaluating periodically whether the numbers of employees tested and the frequency with which those tests will be administered satisfy the Department's duty to achieve a drug-free work force.

D. Notification of Selection

An individual selected for random testing is notified by *the DPM* the same day the test is scheduled, preferably, within two hours of the scheduled testing.

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The *DPM* may designate individuals to assist in the notification of employees in the field offices *and at overseas missions*. The DPM or *his or her* designee explains to the employee that *she or he* is under no suspicion of taking drugs and that the employee's name was selected randomly. In the event the *DPM* or *his or her* designee is unable to locate and/or notify the employee, the assistance of the employee's first and/or second line supervisors will be obtained to locate the employee and ensure that notification is provided and that the employee reports for testing as scheduled.

E. Deferral of Testing

An individual selected for random testing may seek a deferral of testing if the employee's first line and/or second line *supervisor submits* written justification to the DPM that a compelling need necessitates a deferral. Examples of circumstance that may constitute a compelling need include the following:

- (1) Where an employee is in a leave status (*e.g.*, sick *leave*, annual leave), which was approved prior to testing notification;
- (2) Where an employee is in official travel status or training away from the workplace or is about to embark on official travel scheduled prior to testing notification; *or*
- (3) Where there is a compelling Department need necessitating a deferral.

The DPM has sole discretion for granting deferrals. Failure to appear for testing without a deferral from the DPM is considered a refusal to participate in testing and will subject an employee to the full range of disciplinary actions, including dismissal.

An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

X. REASONABLE SUSPICION TESTING

A. Individuals Subject to Reasonable Suspicion Testing

Reasonable suspicion testing may be required of any employee in a *TDP* when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. *Testing* may also be required of any employee in any other position when there is reasonable suspicion of *on-duty* drug use *and/or* on-duty *drug-related* impairment.

B. Grounds

Reasonable suspicion testing may be based upon, but not limited to, the following:

- (1) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
- (2) A pattern of abnormal conduct or erratic behavior;

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- (3) Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
- (4) Information as to illegal drug use provided either by reliable and credible sources or independently corroborated;
- (5) Newly discovered evidence that the employee has tampered with a previous drug test; *or*
- (6) *If the employee voluntarily admits to drug use.*

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

C. Procedures

If an employee is suspected of using illegal drugs, the employee's *supervisor, the Bureau of Diplomatic Security, or any other sources, as appropriate*, will gather all information, facts, and circumstances leading to and supporting this suspicion. All evidence supporting this finding will be submitted to HR/ER. HR/ER will review the case to determine sufficiency of documentation supporting the reasonable suspicion. *If a reasonable suspicion test appears justified, the DPM will submit a report to the DPC that details the circumstances that form the basis to warrant the testing (including dates and times of reported drug related incident(s), reliable and credible sources of information, etc). The DPC has authority to approve the testing and direct the employee to report for reasonable suspicion testing on a given date and specified time.*

D. Obtaining the Sample

The employee may be asked to provide a urine sample under observation in accordance with the criteria in Section XIII(B) of this *DFWP*.

E. Supervisory Training

In accordance with Section IV of this *DFWP*, supervisors *should* be trained to address illegal drug use by employees, to recognize facts that give rise to a reasonable suspicion, and to document facts and circumstances to support a finding of reasonable suspicion. Failure to receive such training, however, does not invalidate otherwise proper reasonable suspicion testing.

XI. APPLICANT TESTING

A. Objective

To maintain the high professional standards of the *Department's* workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the Department. This will have a positive effect on reducing instances of illegal drug use by employees working within the Department, and will provide for a safer work environment.

B. Extent of Testing

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The Department conducts thorough security investigations of all candidates selected for the Foreign Service and of all Civil Service applicants selected for positions requiring a security clearance of *SECRET* or above. The security clearance process is an effective pre-employment screening device for uncovering many problems bearing on applicant *suitability* (including current and/or past patterns of drug abuse) and is the *Department's* primary method of preventing the employment of individuals who abuse drugs. Pre-employment drug testing *will* be required of all individuals selected for employment in positions with either a statutory or regulatory requirement for pre-employment drug testing (*e.g.*, drivers and pilots) and/or for positions which may be designated at the discretion of the *Under Secretary for Management* as particularly sensitive because of the nature of the work (*e.g.*, positions involving law or drug enforcement).

C. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing *will* state the following:

All applicants tentatively selected for this position will be required to submit to urinalysis to screen for illegal drug use prior to appointment.

In addition, the applicant will be notified that the appointment to the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this notice will not preclude applicant testing if advance written notice is provided *to applicant* in some other manner.

D. Procedures

The DPM *will* direct applicants to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and normally within 48 hours of notification.

Applicants will be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by the MRO to determine whether the individual is legally using an otherwise illegal drug.

E. Consequences

The Department will decline to extend a final offer of employment to any applicant with a verified positive result, and such applicant may not reapply to the Department for a period of six months. The Department *will* inform the applicant that a confirmed presence of *an illegal* drug in the applicant's urine precludes the Department from hiring the applicant.

XII. ADDITIONAL TYPES OF DRUG TESTING

A. Accident or Unsafe Practice Testing

The Department is committed to providing a safe and secure *working* environment. It also has a legitimate interest in determining the cause of serious accidents so that it can undertake appropriate corrective measures. Post-accident

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drug testing can provide invaluable information in furtherance of that interest. Accordingly, employees may be subject to testing when, based upon the circumstances of the accident *or unsafe practice*, their actions are reasonably suspected of having caused or contributed to an accident *or unsafe practice* that meets either of the following criteria:

- (1) The accident *or unsafe practice* results in a death or personal injury requiring immediate hospitalization, or;
- (2) The accident *or unsafe practice* results in damage to U.S. *government* and/or private property estimated to be in excess of \$10,000.

If an employee is suspected of having caused or contributed to an accident *or unsafe practice* meeting either of the *above* criteria, the appropriate supervisor will present the *supporting* facts and circumstances to the Director of Safety Programs for investigation. The Director of Safety Programs will report his or her findings to the DPM. If appropriate, arrangements will be made by the *DPM* for testing. The *Director of Safety Programs* will be instructed to prepare a written report detailing the facts and circumstances that warranted the testing.

B. Voluntary Testing

In order to demonstrate their commitment to the Department's goal of a drug-free workplace and to set an example for other *federal* employees, employees not in *TDPs* may volunteer for unannounced random testing by notifying the DPM. These employees will then be included in the pool of *TDPs* subject to random testing, and be subject to the same conditions and procedures, including the provisions of Section VIII(F) of this *DFWP*. Volunteers *will* remain in the TDP pool until the employee withdraws from participation by notifying the DPM of such intent at least 48 hours prior to a scheduled test.

C. Follow-up Testing

All employees referred through administrative channels *who* undergo a counseling or rehabilitation program for illegal drug use through *ADAP* will be subject to unannounced testing for a period of at least one year as stipulated in an abeyance agreement. Such testing is in addition to any testing that may be imposed as a component of the *rehabilitation program*.

XIII. TEST PROCEDURES IN GENERAL

A. *Mandatory* Guidelines for *Federal Workplace* Drug Testing

The Department *must* adhere to the *Mandatory Guidelines* for Federal *Workplace Drug Testing Programs* promulgated by HHS consistent with the authority granted by *the* Executive Order and to the requirements of Section 503 of the Act. The Department's *DFWP will* have professionally trained collection personnel, quality assurance requirements for urinalysis procedures, and strict confidentiality requirements.

B. Privacy *Protections*

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Any individual subject to testing under this *DFWP will* be permitted to provide urine specimens in private, and in a restroom stall or similar enclosure, so that the individual is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual may alter or substitute the specimen to be provided when:

(1) The individual:

- (a) Has previously been found by the Department to be an illegal drug user; or*
- (b) Has previously tampered with a sample; or*

(2) Facts and circumstances suggest that the individual:

- (a) Is an illegal drug user;*
- (b) Is under the influence of drugs at the time of the test; or*
- (c) Has equipment or implements capable of tampering or altering urine samples; or*

(3) The specimen:

- (a) Has a temperature outside the range of 32.5-37.7 degrees C/90.5-99.8 degrees F; or*
- (b) Shows signs of contaminants.*

C. Failure to Appear for Testing

Failure to appear for testing without an approved deferral from the DPM will be considered refusal to participate in testing, and will subject an employee to the full range of disciplinary actions, including dismissal. If an individual fails to appear at the collection site at the assigned time, the collector *will* contact the DPM to obtain guidance on what action should be taken.

D. Opportunity to Justify Positive Test Result

When a confirmed, positive result has been received by the laboratory, the *MRO* will give the donor an opportunity to discuss the test result with him or her. The MRO must review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. Evidence to justify a positive result may include, but is not limited to the following:

- (1) A valid prescription, recognized by federal law; or*
- (2) A statement from the individual's physician verifying a valid prescription recognized by federal law.*

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Following verification of a positive test result, the MRO reports the result to the DPM.

E. Employee Counseling and Assistance

While participating in a counseling or rehabilitation program, and at the request of the program, the employee may be exempted from the random testing designated pool for a period not to exceed 60 days, or for a time period specified in an abeyance contract or rehabilitation plan approved by the *DPM*. Upon completion of the program, the employee immediately *will* be subject to follow-up testing pursuant to Section XII(C) of this *DFWP*.

F. Savings Clause

To the extent that any of the procedures specified in this section are inconsistent with any of those specified in the guidelines promulgated by HHS, or any subsequent amendment thereto, such HHS *guidelines* or amendment *will* supersede the procedures specified in this section, but only to the extent of the inconsistency.

XIV. RECORDS AND REPORTS

A. Confidentiality of Test Results

The laboratory may disclose confirmed laboratory test results only to the MRO *or the staff of the MRO*. Any positive result, which the MRO justifies by appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug, will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. Test results will be protected under the provisions of the Privacy Act, 5 U.S.C. 552(a), et seq., and Section 503(e) of the Act, and may not be released in violation *thereof*. *The MRO may maintain only those records necessary for compliance with this order*. Any records of the MRO, including drug test results, may be released to any management official for purposes of auditing the activities of the MRO, except that the disclosure of the results of any audit may not include *personally identifying* information on any employee.

In order to comply with Section 503(e) of the Act, the results of a drug test of a Department employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be to the following:

- (1) The MRO;
- (2) The DPM;
- (3) The *Director* of *ADAP* in which the employee is receiving counseling or treatment or is otherwise participating;
- (4) Any management official within the Department having authority to take adverse personnel action *or* other administrative *action against such employee*; or
- (5) Pursuant to the order of a court of competent jurisdiction or where

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required by the U. S. government to defend against any challenge against any adverse personnel action.

For purposes of this Section, "management official" includes any management, *government, security, law enforcement*, or *personnel* official whose duties necessitate review of the test results in order to process an adverse personnel action against the employee. In addition, test results with all identifying information removed *will* also be made available to Department personnel, including the DPC, for data collection and other activities necessary to comply with Section 503(f) of the Act.

B. Employee Access to Records

Any employee who is the subject of a drug test *will*, upon written request, have access to any records relating to the following;

- (1) Such employee's drug test; and
- (2) The results of any relevant certification, review, or revocation of proceedings, as referred to in Section 503(a)(1)(A)(ii)(III) of the Act.

An applicant who is the subject of a drug test, however, will not be entitled to this information, except as authorized by law.

C. Confidentiality of Records in General

All drug testing information specifically relating to individuals is confidential except as set forth in this *DFWP* and should be treated as such by anyone authorized to review or compile program records. In order to efficiently implement this *DFWP* and to make information readily retrievable, the DPM maintains all records relating to reasonable suspicion testing, suspicion of tampering evidence, and any other authorized documentation necessary to implement this order.

All records and information of the personnel actions taken on employees with verified positive test results should be forwarded to the *DPM*. Such records remain confidential except as set forth in this *DFWP*, locked in a combination safe, with only authorized individuals who have a "need-to-know" basis having access to them.

D. Program Records

- (1) *Drug-Free Workplace Program officials maintain* only those records *that are* necessary to comply with this *DFWP*;
- (2) *ADAP officials will maintain confidential records of medical* or rehabilitation *information related to* the employee's drug abuse, including the identity *of patients*, diagnosis, prognosis, or treatment *in a manner that is consistent with* 42 CFR Part 2; *and*
- (3) *Treatment records maintained by ADAP* may be *released when the individual gives* written consent. *Written consent will indicate the office or person to whom records may be given and the purpose of the*

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release. By giving written consent, the patient may authorize the disclosure of records to the patient's employer for verification of treatment or for a general evaluation of treatment progress.

E. Maintenance of Records

The DPM, MRO, *ADAP*, and HR/ER maintain records related to the Department's *DFWP* consistent with the Department's Privacy Act System of Records and with all applicable *federal* laws, rules, and regulations regarding confidentiality of records including the Privacy Act 5 U.S.C. 552a. If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Under Secretary for Management. *The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of this order, and should include:*

- (1) Notices of verified positive test results referred by the MRO;*
- (2) Written materials justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;*
- (3) Anonymous statistical reports; and*
- (4) Other documents the DPM, DPC, MRO or ADAP Director deems necessary for efficient compliance with this order.*

F. Records Maintained by U.S. Government Contractors

Any contractor hired to satisfy any part of this *DFWP* will comply with the confidentiality requirements of this *Executive Order* and all applicable *federal* laws, rules, regulations and guidelines.

G. Statistical Information

The DPM collects and compiles anonymous statistical data for reporting the number of the following:

- (1) Random tests, reasonable suspicion tests, accident or unsafe practice tests, follow-up tests, or applicant tests administered;
- (2) Verified positive test results;
- (3) Voluntary drug counseling referrals;
- (4) Involuntary drug counseling referrals;
- (5) *Terminations* or denial of employment offers resulting from refusal to submit to testing;
- (6) *Terminations* or denial of employment offers resulting from alteration of specimens;
- (7) *Terminations* or denial of employment offers resulting from failure to complete a drug abuse counseling program; and
- (8) Employees who successfully complete *a course of rehabilitation or substance abuse treatment.*

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This data, along with other pertinent information, is compiled for inclusion in the *Department's* annual report to Congress required by the Act. This data *will* also be provided to HHS on a semi-annual basis to assist in overall program evaluation and to determine whether changes to the *Mandatory* Guidelines *for Federal Workplace Drug Testing Programs* may be required.